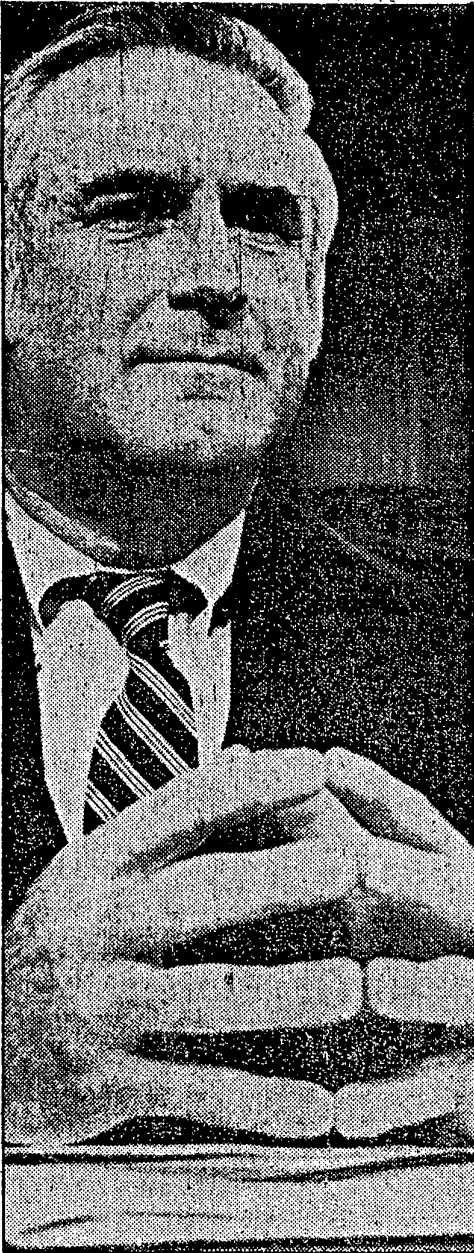


Questions Remain Over Judicial Review of Director's Decisions

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C.I.A. Data Access Runs Into Snags

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WASHINGTON — In the spring, when it looked as if the Central Intelligence Agency and the American Civil Liberties Union might agree on amendments to the Freedom of Information Act, many people saw a case of curious bedfellows.

It was a surprise to see the agency abandon its drive for complete exemption from the disclosure law. It was perhaps even more remarkable to see the civil liberties union willing to consider a new exception to a law that the A.C.L.U. itself describes as "one of the most important pieces of legislation ever enacted by Congress."

Under the proposal, offered by Senator Barry Goldwater, Republican of Arizona, the agency's "operational files," which show how it gathers intelligence, would be exempt from disclosure, and the agency would not have to search such files in response to Freedom of Information requests. But unclassified political, economic and scientific intelligence would still be accessible to the public and citizens could still tap agency files to obtain information about themselves.

The C.I.A. helped draft the bill. John N. McMahon, Deputy Director of Central Intelligence, promised that if the operational files were exempt from search and review, "the public would receive improved service from the agency under the Freedom of Information Act without any meaningful loss of information now released." He said he "hoped" the agency could substantially reduce the two- to three-year wait that requesters must now endure.

So far as can be ascertained, both the agency and the civil liberties union entered negotiations in good faith. Senator Joseph R. Biden Jr., Democrat of Delaware, said the bill reflects a rare "spirit of moderation and compromise." But as Government officials, lawyers, historians and journalists dissected the bill during two days of hearings before the Senate Select Committee on Intelligence in June, it became evident that many features of the bill needed to be clarified or refined. Mark H. Lynch of the A.C.L.U. said his organization would support the bill only if such questions were resolved.

Allan Adler, a lawyer at the A.C.L.U., insisted that his group had made "no deal" with the C.I.A. "We are regarded as a leading watchdog in the area of Freedom of Information," he said, "so some people may have been surprised that we didn't reflexively oppose the bill." But, he added, it is "wholly unacceptable" for the

information requests, and the bill holds out the promise of "more expeditious answers."

One of the major unresolved questions about the Goldwater bill is whether the Director of Central Intelligence would have final authority to decide what was an operational file. Agency officials said the Director should have full discretion to designate files, without judicial review. But Senator Daniel K. Inouye, Democrat of Hawaii, a member of the Intelligence Committee, said he saw "little ground for this conclusion." Charles S. Rowe of The Free Lance-Star in Fredericksburg, Va., speaking for the American Newspaper Publishers Association, said it was essential to have judicial review, or else citizens could not enforce their right of access to C.I.A. files.

Historians also find certain aspects of the bill very troubling. Prof. Anna K. Nelson, speaking for the Organization of American Historians and the American Historical Association, said that C.I.A. officials would be tempted to "place ever-increasing numbers of documents in file cabinets marked 'operational,' including those that might be merely embarrassing." Moreover, she said, historians should have access to documents in the operational files after a specified period, such as 25 or 30 years.

'Whittling Away'

Others are skeptical of any Reagan Administration proposal relating to the Freedom of Information Act. Steven Dornfeld, president of the Society of Professional Journalists, Sigma Delta Chi, said it had to be considered in the context of the Administration's overall policy in this area, "which has been constantly whittling away the amount of information the American people receive about their Government."

Finally, there is the question whether the Goldwater bill would satisfy the Administration. Senator Inouye said he was concerned that if the bill passed, other intelligence agencies might seek similar or more sweeping exemptions from the Freedom of Information Act. Richard X. Larkin, president of the Association of Former Intelligence Officers, said that other agencies should receive "similar treatment."

In the House, Representative Romano L. Mazzoli, a Kentucky Democrat, has introduced a bill similar to Mr. Goldwater's. When the House and Senate reconvene this month, lawmakers will turn their attention to the bills. A House committee and perhaps a Senate panel are expected to hold further hearings. Their goal is to iron out problems that now make the whole issue seem more complex than it appeared in the spring.